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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/718,131

11/20/2003

Julian Ross

2864000

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76914 7590 04/22/2008

OXYSURE SYSTEMS, INC  
10880 JOHN W. ELLIOT DR.  
SUITE 600  
FRISCO, TX 75034

EXAMINER

JOYNER, KEVIN

ART UNIT

PAPER NUMBER

1797

MAIL DATE

DELIVERY MODE

04/22/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/718,131	<b>Applicant(s)</b> ROSS, JULIAN	
	<b>Examiner</b> KEVIN C. JOYNER	<b>Art Unit</b> 1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 March 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 28, 29, 34-36 and 43-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 43-45 is/are allowed.
- 6) ☒ Claim(s) 28, 29 and 34-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 20, 2008 has been entered.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 28 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification does not support the newly disclosed limitation concerning adding a heat absorbing compound to the compartment after dissolving the limiting reactant and dissolving the catalyst. More specifically, the specification discloses that the catalyst and hydrated salt are combined and added to

the compartment. The specification does not disclose that the heat absorbing compound is added after the catalyst is dissolved in the compartment.

4. Claims 34-36 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification does not support the newly disclosed limitations of a kit comprising a predetermined amount of catalyst selected from the group consisting of an iron compound, iron oxide, a copper compound, and a copper oxide **and** a predetermined amount of heat absorbing compound, comprising a combination of a manganese compound and a sodium-based compound. More specifically; page 6, lines 10-16 disclose a catalyst in conjunction with a heat absorbing compound comprising a manganese compound and a sodium-based compound, **or** a catalyst comprising a iron or iron oxides and copper or copper oxides. Since claims 35 and 36 are dependent upon claim 34, then they fail to comply with the written description requirement as well.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 35 and 36 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. Claims 35 and 36 recite the limitation "the apparatus" in line one of the claims. There is insufficient antecedent basis for this limitation in the claim. The Office suggests the applicant to amend to, "the kit."

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 34-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yugawa (Japanese Document No. JP 61222906 A) in view of Moore et al. (U.S. Publication No. 2005/0022810).

Yugawa clearly discloses a kit for generating oxygen, comprising:

A sealed vessel having walls of varying thickness and a compartment where a chemical reacting that produces oxygen takes place (drawings 1-5 and 1—12),

A fluid transfer member (60) fluidly coupling the compartment to an outer surface,

An output line (80) that is a carrying tube (concerning claim 35) coupled to the vessel,

A usage device (81) coupled to the output line to enable a user to breath the oxygen,

A predetermined amount of water

A predetermined amount of water soluble powder comprising sodium percarbonate, and

A predetermined amount of catalyst in conjunction with a heat absorbing compound as disclosed in the abstract as well as Drawings 1-41. More specifically, as shown in Drawing 41, the upper portion of the vessel is provided with two layers that vary in thickness with respect to the lower portion of the vessel. Therefore, the vessel varies in thickness.

Yugawa does not appear to disclose that the catalyst is an iron compound, and iron oxide, a copper compound, or a copper oxide; or that the heat absorbing compound is a compound comprising a combination of a manganese compound and a sodium compound. However, it is conventionally well known and thus common to one of ordinary skill in the art to comprise a catalyst from an iron compound, an iron oxide, a copper compound, or a copper oxide as well as a heat absorbing salt from a combination of a manganese compound and a sodium compound. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the kit of Yugawa to comprise the catalyst from an iron compound, an iron oxide, a copper compound, or a copper oxide as well as a heat absorbing salt from a combination of a manganese compound and a sodium compound as such is extremely well known and thus common to one of ordinary skill in the art.

Yugawa does not appear to disclose that the kit comprises a humidifier coupled to an output line and a transfer member. Moore discloses a kit for generating oxygen comprising a sealed vessel and a compartment where a chemical reaction that

produces oxygen takes place (paragraph 11). The reference continues to disclose that the kit comprises a fluid transfer member (120) coupling the compartment to a humidifier (156), and an output line (150) coupled to said humidifier and a usage device (168) as shown in Figure 8. Said humidifier is provided in order to cool and moisten the oxygen produced from the exothermic reaction (paragraph 17). Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the apparatus of Yugawa to include a humidifier coupled to an output line and a transfer member in order to cool and moisten the oxygen produced from the oxygen generator as exemplified by Moore (Support for the humidifier is found in Figure 1 of provisional application No. 60/477,452, which is incorporated by reference and provided for the Applicant).

Regarding claim 36, Yugawa in view of Moore is fully capable of humidifying the oxygen flow to a relative humidity of about 65 percent.

#### ***Allowable Subject Matter***

10. Claims 43-45 are allowed.

11. The following is a statement of reasons for the indication of allowable subject matter:

The closest prior art, namely Yugawa (Japanese Document No. 6122906 A), Moore et al. (U.S. Publication No. 2005/0022810), Ueno (U.S. Patent No. 6,267,114) and Koslow (U.S. Patent No. 4,548,730), do not teach, suggest or motivate one of ordinary skill in the art to provide a method for generating oxygen as disclosed in

independent claims 43, 44 and 45. More specifically, the prior art does not teach the method of generating oxygen comprising a vessel including the limitations of adding water, a limiting reactant, a catalyst and a heat absorbing compound as set forth in independent claims 43-45, wherein the oxygen is controlled by varying the amount of the limiting reactant and the catalyst; and

The humidity and temperature are varied in the humidifier during the process.

### ***Response to Arguments***

12. Applicant's arguments with respect to claims 28, 29 and 34-36 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KEVIN C. JOYNER whose telephone number is (571)272-2709. The examiner can normally be reached on M-F 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys Corcoran can be reached on (571) 272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Elizabeth L McKane/  
Primary Examiner, Art Unit 1797

KCJ